

REMARKS

The present application relates to Canola Line 45A55. Claims 1, 2, and 43-61 are currently pending. Claims 1, 43-50 and 52-61 have been amended. New claims 62, 63 and 64 have been added. No new matter has been added by the present amendment. Applicant respectfully requests consideration of the following remarks.

Detailed ActionClaim Objections

Applicant acknowledges the objection of claims 43-44, 46-50, 52-53 and 55-61. Applicant has now amended these claims to incorporate the Examiner's suggested changes thereby making these objections moot. Applicant thanks the Examiner for pointing out these inadvertent errors.

Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 1-2 and 43-61 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Claim 1 lacks antecedent basis for the limitation "said canola variety 45A55" in lines 1-2.

Applicant has now amended claim 1 to include "canola variety" in line 1, thus alleviating this rejection.

The Examiner rejects claims 45 and 54 as indefinite in their recitation of "tissue culture of protoplasts". The Examiner states that "protoplasts are not tissue cultures".

Applicant respectfully traverses this rejection. However, in an effort to expedite prosecution Applicant has canceled the language "protoplasts" in claims 45 and 54 and added new claims 62 and 63, depending upon claims 45 and 54, respectively, to state "[p]rotoplasts produced from the tissue culture of claim 45[54]". Applicant respectfully submits this rejection is now alleviated.

Claims 46 and 55 are indefinite because the members of the Markush group are not tissue types and should either be recited in the plural or the singular.

Applicant respectfully traverses this rejection. The claims do recite tissue types as defined in the specification on page 24. In addition, Applicant asserts the claim is directed to a tissue culture "wherein the cells or protoplasts of the tissue culture are from a tissue selected from the group" and thereby do adequately define "tissue" as provided in the specification. Applicant has also amended the claim to recite the singular forms of the tissue, thereby alleviating this rejection.

The Examiner rejects claims 49-50 as indefinite in the recitation of "parent is designated 45A55, ...PTA-5684".

Applicant respectfully traverses this rejection. Applicant asserts the claims do specifically refer to whether the parent is the female parent (claim 49) or the male parent (claim 50). Applicants submit that the claims originally stated --wherein the female parent is designated 45A55-- and -- wherein the male parent is designated 45A55-- however in an effort to expedite prosecution Applicants have amended the claims to incorporate the language as suggested by the Examiner, thus alleviating this rejection.

Claim 60 lacks antecedent basis for the limitation "said first generation (F1) canola variety 45A55 progeny canola plant" in part (b).

Applicant respectfully traverses this rejection. Applicant submits there is proper antecedent basis in line 1 of claim 60 that reads " method for producing a first generation (F1) canola variety progeny canola plant", alleviating this rejection.

The Examiner states that claim 61 is rejected as being incomplete for omitting essential elements according to MPEP § 2172.01.

Applicant respectfully traverses this rejection. However, in an effort to expedite prosecution, Applicants have amended claim 61 to incorporate the language --is the female parent--, as suggested by the Examiner, thereby rendering this rejection moot. Support in the specification can be found on pages 6-7 and 24.

In light of the above amendments and remarks, Applicant respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. § 112, second paragraph.

Double Patenting

The Examiner rejects claims 1-2 and 43-61 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,639,131 ('131). The Examiner states that although the conflicting claims are not identical, they are not patentably distinct from each other. The Examiner further states that the "canola plants in the instant application, 45A55, and the canola plants of '131, 45A54, have the same traits including flower color (yellow), shedding pollen, plant type (spring), and presence of blackleg and white rust resistance, for example". The Examiner goes on to state "if the claimed plants and seeds of the instant invention are not identical to 45A54, then it appears that 45A54 only differs from the claimed plants and seeds due to minor morphological variation, ... that would not confer patentable distinction".

Applicant respectfully traverses this rejection. Claims 1-2 and 43-61 are patentably distinct because they involve a novel canola seed, plants, plant parts, and methods. Applicant further asserts the use of the designation "45A55" is not arbitrarily assigned. It is common practice within plant breeding that a new and distinct canola seed is designated with a numerical number such as 45A55 which defines the claimed canola variety 45A55 which has been deposited under an ATCC accession number. The use of such a designation is a common practice within the art and would be well understood by one skilled in the art to be two distinct and unrelated canola plants and seeds. In addition, as provided in 37 C.F.R. §§ 1.801-1.809, Applicant has previously amended the claims and the specification accordingly to include the ATCC accession number from the deposit of Canola Line 45A55 thereby making this rejection moot.

Conclusion

In conclusion, Applicant submits in light of the above amendments and remarks, the claims as amended are in a condition for allowance, and reconsideration is respectfully requested. If it is felt that it would aid in prosecution, the Examiner is invited to contact the undersigned at the number indicated to discuss any outstanding issues.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



Lila A. T. Akrad, Reg. No. 52,550
McKEE, VOORHEES & SEASE, P.L.C.
801 Grand Avenue, Suite 3200
Des Moines, Iowa 50309-2721
Phone No: (515) 288-3667
Fax No: (515) 288-1338
CUSTOMER NO: 27142

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Attorneys of Record